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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/631,239

07/31/2003

Gregory W. Smiley

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EXAMINER

ILAN, RUTH

ART UNIT

PAPER NUMBER

3616

MAIL DATE

DELIVERY MODE

11/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/631,239

Applicant(s)

SMILEY ET AL.

Examiner

Ruth Ilan

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5 and 7-20 is/are allowed.
- 6) ☒ Claim(s) 21-33 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/3/07 has been entered.

### ***Claim Objections***

2. Claims 1 and 32 are objected to because of the following informalities: in claim 1, line 17, "the foot switch" lacks antecedent basis. In claim 32, line 2, "in a positioned" should be "in a position". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 29-33 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is insufficient written description and support in the specification for the limitations by which the controller determines a

direction and a speed of operation based on the signals from both the fore and the aft control handles. As such these limitations constitute new matter.

***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Please note, that the previous rejection is being maintained, and is repeated her for convenience:
7. Claims 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haack et al. (6,564,906) in view of Gilliland et al. (5,595,259).

Haack et al. disclose a material handling vehicle, comprising: an operator compartment (211; see Figure 4); a steering mechanism (223) accessible to an operator standing in both of a fore vehicle direction and an aft direction; a fore operator control handle (225) for selecting a direction and a speed of travel (see description of similar controller- column 5, lines 19-24) being mounted at a first end of the operator compartment and configured for operation in a fore vehicle direction; an aft operator control handle (225') for selecting a direction and a speed of travel; and a traction system (see column 4, lines 52-55) controlled by the fore and aft operator control handles to drive the lift truck whereby the steering mechanism is mounted to be accessible to an operator facing the first end of the compartment (as in Figure 4) and controlling the fore operator control handle and to an operator facing the second end of the compartment and controlling the aft operator control handle (the operator of Figure 4 can keep the left hand on handle 223 and pivot the right hand to control 225').

Haack et al. discloses an operator control (247 & 249) accessible to an operator standing in both of a fore vehicle direction and a aft direction. Haack et al. discloses a floor switch (249). Regarding claim 7, the aft operator control is mounted at an angle to the side of the compartment (any orientation would be "at an angle") to be perpendicular of the arm of the operator when operating the control (this limitation would depend on the position of the operator). The operator control includes a steering wheel (223 and 223').

Haack et al. does not specifically show a twist grip handle.

Gilliland et al. teaches a fork lift truck with a twist grip handle (90). The grip handle has a smooth outer grip (smooth is a relative term; however as seen in Figure 5, the grip is smooth from one end to the other). The grip has recessed grooves (see Figure 6). The grip is a plastic (see column 4, lines 25-27); while urethane can be considered to be a thermoplastic, if it is found that urethane is not a thermoplastic, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the grip to use a thermoplastic material as the selection of a known material based on its suitability of use involves only routine skill in the art. Gilliland et al. also teaches a horn switch (86) on the handle control.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Haack et al. with the teachings of Gilliland et al. to use a twist grip handle in order to provide a simple control mechanism for the vehicle.

Haack et al. does not disclose the exact height of the control handle, it would have been obvious to one of ordinary skill in the art at the time the invention was made

to construct the handle at substantially thirty eight inches from the floor in order to provide a comfortable height for the user.

Regarding claim 27, as the grip handle is rotational in a first direction for a motion in a first direction, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the second handle be rotational in a second direction for a motion in a second direction each grip would be rotated the same direction depending on the direction the occupant was facing.

***Allowable Subject Matter***

8. Claims 1-5, and 7-20 are allowed, pending correction of the objection noted in claim 1.

***Response to Arguments***

9. Applicant's arguments filed 8/3/2007 have been fully considered but they are not persuasive, with respect to claims 21-28, and the examiner maintains her rejection.

10. Regarding the twist grip, twist grips are entirely conventional, and Gilliland teaches that twist grip mechanisms are well known to be used in speed control. Haack et al. suggests the use of conventional control handles (see col. 5, lines 27-30.) Gilliland does not teach away from twist grip handles, and it is unclear why the Applicant asserts so. Gilliland merely improves on a conventional twist grip handle by including thumb buttons. If Gilliland taught away from twist grip handles, it wouldn't provide improvement, but rather it would provide a different type of handle. Gilliland is used to show that a twist grip is a well known speed control mechanism. Regarding the


mounting in a particular orientation, the bodily incorporation of such devices would be well within the level of ordinary skill in the art. It is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Ilan whose telephone number is 571-272-6673. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ruth Ilan  
Primary Examiner  
Art Unit 3616



10/28/07

RI